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May 14, 2020

## MEMORANDUM ENDORSEMENT

Via ECF

The Honorable Laura Taylor Swain  
U.S.D.C. Southern District of New York  
Room 1620  
500 Pearl Street  
New York, NY 10007

**Re: UBIQUITI INC. v. PERASO TECHNOLOGIES INC., et al., 20 Civ. 1312**  
**(LTS) (GWG)**

Dear Judge Swain,

We represent Ubiquiti Inc., the plaintiff in the above-captioned matter. On May 7, 2020, the Defendants Bill McLean, Jim Whitaker, David Adderley, Imed Zine and Riad Zine moved to dismiss the claims filed against them pursuant to F.R.C.P. Rules 12(b)(2) and 12(b)(6).<sup>1</sup> Pursuant to Rule 2(b)(ii) of Your Honors' Individual Practices, we submit this letter to request leave to amend in response to the motion. A copy of plaintiff's proposed Second Amended Complaint is submitted with this letter.

The Individual Defendants' motion to dismiss under Rule 12(b)(6) asserts that the fraud claim is inadequately pled against the individual defendants other than Bill McLean because the only statement identified as fraudulent is a statement made by McLean. The proposed Second Amended Complaint addresses this issue by limiting the fraud claim to defendant McLean. The Individual Defendants also asserts that the fraud claim fails because reasonable reliance on McLean's false statement is not adequately pled. The proposed Second Amended Complaint includes additional facts demonstrating reasonable reliance. The Individual Defendants' Rule 12(b)(6) motion asserts that the tortious interference claim is inadequately pled against defendant McLean because it depends upon the allegation that McLean is a holder of preferred shares in Peraso when, in fact, he is not. The proposed Second Amended Complaint corrects this

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<sup>1</sup> Defendant Shawn Abbott has, to date, avoided service of process. He is not currently represented by counsel for the other defendants.

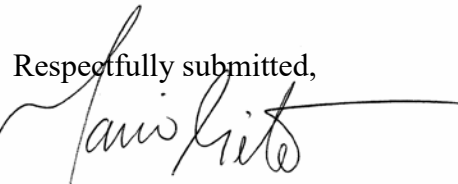
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allegation and alleges that McLean was the holder of millions of options that would immediately vest upon a change of control transaction. The individual defendants' remaining contentions regarding the adequacy of the allegations directed against them are not sound.

The proposed Second Amended Complaint also contains additional allegations relevant to the individual defendants' Rule 12(b)(2) motion.

We respectfully submit that justice would be served by allowing plaintiff to serve the proposed Second Amended Complaint.

Respectfully submitted,  
  
Mario Aieta

Attachment

cc: Jodyann Galvin, Esq.  
(counsel for Defendants)

Any motion to amend is returnable before the undersigned. The Court asks plaintiff's counsel to confer with opposing counsel to see if they will stipulate to the filing of the proposed amended pleading. If an agreement is reached, plaintiff may inform the Court by letter. If defendants agree, such agreement shall be without prejudice to any future motion to dismiss or any other arguments defendants may have in the future with regard to the proposed pleading.

Given the early stage of this case, and given that any arguments as to "futility" of amendment will be completely preserved for a motion to dismiss, the Court assumes that it will not be a problem for defendants to agree to the filing.

If agreement cannot be reached, defendants shall file by May 20, 2020, a brief letter explaining their objection.

So ordered.  
Dated: May 15, 2020

  
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GABRIEL W. GORENSTEIN  
United States Magistrate Judge